

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

T.M., by and through her Guardian Ad
Litem, John D. Elliott,

Plaintiff,

vs.

SC Department of Social Services
(SCDSS), Irene Williams, April Fogle,
Lalita Garnett, Lawanda Greggs, Alex
Wright, Mary Buskey, Michelle Ingam-
Smith, Anna Jones, Nicole Scott, Melissa
Graham, Yvonne Wilson, Shavonna
Gibson, SC Youth Advocate Program, Inc.,
and Kim Long,

Defendants.

Case No: 3:15-CV-02084-TLW

**SOUTH CAROLINA YOUTH ADVOCATE
PROGRAM AND KIM LONG’S
REPLY TO PLAINTIFF’S
RESPONSE IN OPPOSITION TO
MOTION TO DISMISS**

INTRODUCTION

Defendants South Carolina Youth Advocate Program and Kim Long (collectively “the SCYAP Defendants”) submit this Reply to Plaintiff’s Response in Opposition to the SCYAP Defendants’ Motion to Dismiss. In her Response, Plaintiff requests this Court to deny the SCYAP Defendants’ Motion to Dismiss as “moot” and grant her concurrently filed motion to amend her complaint.

The SCYAP Defendants respectfully request this Court grant their Motion to Dismiss with prejudice. The Motion is not moot, and it is premature to rule on Plaintiff’s Motion to Amend. Moreover, Plaintiff admits her First Amended Complaint failed to meet the pleading standard under Bell Atlantic Corporation v. Twombly, 550 U.S. 544, 545 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In the alternative, if the Court is inclined to grant the Motion to Dismiss with leave for Plaintiff to amend her Complaint, the SCYAP Defendants request an

opportunity to respond to Plaintiff's Motion to Amend on any grounds under Rule 12, of the Federal Rules of Civil Procedure.

ARGUMENTS

I. The Motion To Dismiss Is Not Moot.

Plaintiff did not submit any argument in response to the Motion to Dismiss, other than requesting leave to amend her Complaint. It is premature to rule on Plaintiff's Motion to Amend while the SCYAP Defendants' Motion to Dismiss is pending. This Court has not yet granted leave for Plaintiff to amend her Complaint, and the SCYAP Defendants did not consent to Plaintiff amending her Complaint. See Rule 15, Fed.R.Civ.P. (providing a party may amend its pleading only with the opposing party's written consent or the court's leave). The SCYAP Defendants' respectfully request a ruling by the Court on the Motion to Dismiss.

II. Plaintiff Admits The First Amended Complaint Failed To Meet The Pleading Standard Under Twombly and Iqbal. Accordingly, The First Amended Complaint Should Be Dismissed.

In her Response, Plaintiff admits the initial pleadings against the SCYAP Defendants were "lacking" and the SCYAP Defendants "were correct in their motion." This Court should grant the SCYAP Defendants' Motion to Dismiss. Plaintiff failed to plead a negligence cause of action against the SCYAP Defendants because she failed to state any facts that gave rise to a duty by them or that the SCYAP Defendants breached any duty. In addition, her claim for violation of 42 U.S.C. section 1983 claim should also be dismissed because she failed to plead any facts to support that SCYAP Defendants are state actors, or that they were "deliberately indifferent" to her rights. Plaintiff's allegations in her First Amended Complaint are bare legal conclusions and formulaic recitations of a cause of action's elements, which are insufficient to plead a cause of action under Twombly, 550 U.S. at 570, and Iqbal, 556 U.S. at 678.

CONCLUSION

The SCYAP Defendants respectfully request this Court grant the Motion to Dismiss with prejudice. In the alternative, if the Court is inclined to grant the Motion to Dismiss with leave for Plaintiff to amend her Complaint, the SCYAP Defendants request an opportunity to respond to Plaintiff's Motion to Amend on any grounds under Rule 12, of the Federal Rules of Civil Procedure.

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR SOUTH CAROLINA
YOUTH ADVOCATE PROGRAM

Columbia, South Carolina
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